IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 10, 2006 Session

DOUGLAS CRAIG, ET AL. v. LINDSEY LOVING, ET AL.

Appeal from the Circuit Court for Wilson County
No. 13021 Clara Byrd, Judge

No. M2005-02216-COA-R3-CV - Filed on March 13, 2007

Findley and Nelle Mahaffey were owners of Sunshine Transport, which provided transportation to TennCare patients. They employed roughly twenty drivers and carried no workers' compensation insurance, but obtained a policy of automobile insurance from Mountain Laurel Assurance Company with uninsured-underinsured motorist coverage of $1,000,000. Douglas Craig was a driver for Sunshine Transport, and on January 13, 2003, while driving in the course of his employment, was injured in a collision with an automobile driven by Lindsey Loving, minor step-daughter of Thomas Thompson. Craig recovered a workers' compensation judgment against the Mahaffeys in the amount of $189,494.77, on which judgment the Mahaffeys paid a total of $50,000. Craig filed suit against Loving and Thompson, recovering a judgment against them for $375,293.46. The liability carrier for Loving and Thompson paid into court its $50,000 policy limit. The Mahaffeys intervened asserting subrogation interests for the workers' compensation judgment entered against them. Mountain Laurel sought offsets under its underinsured motorist policy for the $50,000 policy limit paid by Thompson and Loving together with the $189,494.77 workers' compensation judgment. The trial court determined that Mountain Laurel was entitled to a $50,000 offset for the payments made on behalf of Loving and Thompson and also credit for the $50,000 actually paid by the Mahaffeys but not for the remainder of the unpaid workers' compensation benefits. The trial court further held that the Mahaffeys were not entitled to any subrogation interests. Mountain Laurel and the Mahaffeys appeal. The judgment of the trial court relative to the Mahaffeys is affirmed. The judgment of the trial court as to Mountain Laurel is reversed, and the case is remanded to the trial court for such further proceedings as may be necessary.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part, Reversed in Part and Remanded

WILLIAM B. CAIN, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

John Thomas Feeney, Nashville, Tennessee, for the appellant, Mountain Laurel Assurance Company.

William Kennerly Burger, Murfreesboro, Tennessee, for the appellee, Douglas Craig.

Mark W. Henderson, Lebanon, Tennessee, for the appellees, Findley and Nelle Mahaffey d/b/a Sunshine Transport.

OPINION

I. FACTUAL BACKGROUND

Lindsay Loving ("Loving") is the minor stepdaughter of Thomas Thompson ("Thompson"). On January 13, 2003, the vehicle Loving was driving, which was owned by Thompson, struck the vehicle driven by Douglas Craig ("Craig"). At the time of the accident, Craig was employed as a van driver by Sunshine Transport, a company owned wholly by Findley and Nelle Mahaffey (collectively "the Mahaffeys"). His duties involved the transportation of TennCare patients to medical appointments. At the time that Craig worked for Sunshine Transport, the company employed roughly twenty drivers. When the accident occurred, Craig was within the scope of employment. In the accident, Craig sustained numerous injuries resulting in the accrual of medical expenses. Also injured in the accident was Howard Anderson ("Anderson"), a passenger in Craig's van. Anderson maintained his own action against Loving, Thompson, Craig, the Mahaffeys, and Sunshine Transport.

At the time of the accident, Thompson maintained a personal automobile policy covering Loving. The policy had a coverage limit of $50,000 for each person for bodily injury. The Mahaffeys maintained an automobile insurance policy with Mountain Laurel Assurance Company ("Mountain Laurel"), a Progressive Insurance company and often referred to as Progressive Insurance Company in the lower court proceedings. The policy had an uninsured-underinsured motorist coverage limit of $1,000,000.

Following the accident, Craig filed a Workers' Compensation claim against the Mahaffeys, who did not maintain workers' compensation insurance to cover Sunshine Transport's drivers. The Final Order in the workers' compensation case was entered on September 20, 2004. Craig received a default judgment in the amount of $189,494.77, comprised of $8,345.51 for temporary total disability, $53,420.80 for permanent partial disability, $127,293.46 for accrued medical expenses, and $435.00 for discretionary costs. At the time of trial in the case at bar, the Mahaffeys had paid $50,000 toward their workers' compensation obligation to Craig.

Craig filed suit against Loving and Thompson, seeking damages for his injuries, on November 3, 2003. On January 6, 2005, the Mahaffeys filed a Motion to Intervene as of Right pursuant to T.C.A. 50-6-112(c)(1)[1] "for the purpose of protecting and enforcing their statutory lien

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[1] **50-6-112. Actions Against Third Persons.**

(a) When the injury or death for which compensation is payable under the Workers' Compensation Law, compiled in this chapter, was caused under circumstances creating a legal liability against some person other than the employer to pay damages, the injured worker, or such injured worker's

(continued...)

for workers' compensation benefits that they have paid to Plaintiff, as a proximate result of the automobile accident herein." A week later, the Mahaffeys amended their Motion to include a copy of the workers' compensation order detailing the benefits to Craig, "for which the movants claim a subrogation interest against any judgement awarded [Craig] in the instant case." The court granted the Mahaffeys' Motion to Intervene on January 21, 2005. In the Mahaffeys' Interveners' Complaint, they prayed that the court grant "an order imposing a statutory lien for workers' compensation benefits in the amount of $189,494.77, against any judgment rendered herein in favor of Plaintiff Douglas Craig."

On February 7, 2005, Craig answered the Mahaffeys' Interveners' Complaint, responding as follows:

> It is denied that the Mahaffeys have paid workers' compensation benefits in the amount of ($189,497.77), or that the Mahaffeys have paid full statutory benefits required by law, which is necessary to trigger the entitlement to the statutory subrogation right. Responding affirmatively, Plaintiff Craig asserts that Mr. and Mrs. Mahaffey willfully failed to provide workers' compensation coverage for their employees for a period of several consecutive years, contrary to the requirements of the Tennessee Workers' Compensation statute. A deduction from the single limits UM policy (available to employee Douglas Craig) would have the legal effect of requiring the employee (and the remaining, non-employee claimant, Anderson,) to subsidize the statutory default wilfully caused by Mr. and Mrs. Mahaffey. Based upon the authorities which will be submitted in a separate legal memorandum, it is contended that no statutory subrogation lien has arisen in the case, and that no portion of any sums paid by the Mahaffeys (or obligated under any order) should be subsidized from the single limits UM policy. That policy will be inadequate to pay for the entire damages experienced by both Craig and Anderson. Application of the subrogation statute would be inequitable, and would provide an unjust benefit to the wilfully defaulting employer, to the financial detriment of the innocent employee and a non-employee injured victim.

On January 20, 2005, Mountain Laurel filed the following Motion to Confirm Offset Amount:

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[1](...continued)
dependents, shall have the right to take compensation under such law, and such injured worker, or those to whom such injured worker's right of action survives at law, may pursue such injured worker's or their remedy by proper action in a court of competent jurisdiction against such other person.
...
(c) (1) In the event of such recovery against such third person by the worker, or by those to whom such worker's right of action survives, by judgment, settlement or otherwise, and the employer's maximum liability for workers' compensation under this chapter has been fully or partially paid and discharged, the employer shall have a subrogation lien therefor against such recovery, and the employer may intervene in any action to protect and enforce such lien.

> Comes now Progressive Insurance Company, through counsel, and submits this motion seeking an Order confirming the amount of any offset it will be entitled to as a result of the terms of its uninsured motorist insurance policy and the resolution of the workers' compensation claim pursued by Plaintiff. It is the position of Progressive Insurance Company that any judgment obtained by Mr. Craig in this matter, for the purposes of calculating Progressive's uninsured motorist insurance liability, should be reduced by the sum of $127,293.46 representing medical expenses, $53,420.80 representing permanent partial disability benefits, plus temporary total disability benefits in the amount of $8,345.51 for a total offset of $189,059.77[2].

On March 15, 2005, the trial court issued its Judgment on the matter, granting Craig a $375,293.46 judgment against Loving. Also, the court reserved three issues for further determination. On August 16, 2005, the trial court issued the following post-trial Order on Reserved Legal Issues:

> 1. Judgment in the above-captioned matter was entered by the court on March 15, 2005, but reserved three (3) legal issues stipulated by the parties to be proper for the court's determination rather than a decision for the jury. The legal issues for the court's post-trial consideration are as follows:
>
> (1) The legal effect of the signature of Thomas Thompson on the financial responsibility documents executed prior to the issuance of the drivers' license for Lindsey Loving; and
>
> (2) The effect and application of the claim [for] set off which is asserted on behalf of the uninsured motorist carrier, Progressive Insurance Company; and
>
> (3) The legal claims raised in behalf of the Plaintiff's employer (Intervening Petitioners Findley Mahaffey and wife Nelle Mahaffey, D/B/A/ Sunshine Transport) for the recovery by subrogation of sums paid pursuant to the Tennessee Workers' Compensation statute.
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> 2. Having considered the parties' respective briefs and legal arguments on each of the foregoing points, the court finds as follows:
>
> a. The signature of Thomas Thompson, as step-father for Lindsey Jeanne Loving on the document entitled "State of Tennessee Minor/Teenage Affidavit and Cancellation", establishes joint and several liability for any negligence or willful misconduct of the driving applicant (Lindsey Loving), and that, accordingly, the judgment granted by the jury in favor of Douglas Craig, in the amount of three hundred, seventy-five thousand, two hundred, ninety-three dollars and 46/100 ($375,293.46) is effective, and granted, upon the joint and several liability provisions of T.C.A. § 55-50-311 and

[2] Mountain Laurel does not include the additional $435.00 in discretionary costs in its total.

T.C.A. § 55-50-312, against Thomas Thompson, plus the cost of the case, for which execution may issue if necessary.

b. With regard to the issues referable to the uninsured motorist policy which was issued through Progressive Insurance Company (Mountain Laurel Assurance Company, Policy No. CA 0-41-11-252-4), the court finds that Mr. Craig is entitled to receive the entire judgment of three hundred, seventy-five thousand, two hundred, ninety-three dollars and 46/100 cents ($375,293.46), of which fifty thousand dollars and no/100 ($50,000) has been tendered to the Clerk of the Court (following the entry of the jury's judgment), by the liability carrier for Defendants Lindsay Loving and Thomas Thompson. As discussed below, the court finds that Mr. Craig has received the sum of fifty thousand and no/100 ($50,000) from his employer as partial satisfaction for an uninsured workers' compensation judgment in Coffee County Tennessee Circuit Court. Accordingly, judgment is granted of the remaining balance in favor of Douglas Craig, and against the Defendant Progressive Insurance (Mountain Laurel Assurance Company, Policy No. CA 0-41-11-252-4) for the sum of two hundred, seventy-five thousand, two hundred, ninety-three dollars and 46/100 ($275,293.46), for which execution may issue if necessary. Consistent with the provisions of T.C.A. § 56-7-1201, et seq (specifically T.C.A. § 56-7-1204[3]), Progressive Insurance Company shall have statutory subrogation rights for all sums paid as uninsured/underinsured motorist carrier against the Defendant driver, and her license surety, as described above.

c. The application for subrogation rights asserted by the Intervening Petitioners Findley Mahaffey and wife Nelle Mahaffey, D/B/A/ Sunshine Transport, pursuant to T.C.A. § 50-6-112 is denied, to the extent that the Intervening Petitioners seek recovery from the proceeds paid to the court by the liability carrier, and the remaining amounts ordered by the court to be paid by the underinsured motorist

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[3] **56-7-1204. Payment by insurer - Subrogation.**

(a) In the event of payment to any person under the coverage required by this part, and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be subrogated to all of the rights of the person to whom such payment has been made, and shall be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury or property damage for which such payment is made, including the proceeds recoverable from the assets of an insolvent insurer.

(b) Payment by an insurer under the coverage required by this part shall not constitute a satisfaction of the liability of the party or parties responsible for such bodily injury or property damage under the financial responsibility laws of this state.

> carrier, as described above. The court has reduced the amount payable by the uninsured motorist carrier by the sums already collected by Mr. Craig from his judgment in the amount of one hundred, eight-nine thousand, fifty-nine dollars and 77/100 ($189,059.77), entered in the Circuit Court of Coffee County Tennessee in Mr. Craig's workers' compensation claim against his former employer. With the exception of reducing the amount payable under the terms of the uninsured motorist policy by the amount collected by Mr. Craig from his employer, the court declines further relief to the employer in this action.
>
> 3. Costs are assessed to the Defendants. This order shall constitute a final order in the case, within the meaning of Rule 54.02 of the Tennessee Rules of Civil Procedure.

Appellant Mountain Laurel Assurance Company presents two issues on appeal: (1) whether Mountain Laurel is entitled to offset the total worker's compensation benefits awarded to Craig and the underlying liability insurance coverage from its liability to Craig under the Uninsured Motorist policy, and (2) whether the Mahaffeys are entitled to recover by subrogation the sums that they have paid to Craig pursuant to the Tennessee Worker's Compensation Act. Craig and the Mahaffeys submitted Appellee briefs; Thompson and Loving are not involved in the appeal.

II. STANDARD OF REVIEW

> Questions relating to the interpretation of written contracts involve legal rather than factual issues. *Brandt v. Bib Enters., Ltd.*, 986 S.W.2d 586, 592 (Tenn.Ct.App.1998); *Rapp Constr. Co. v. Jay Realty Co.*, 809 S.W.2d 490, 491 (Tenn.Ct.App.1991). Insurance policies are contracts, and thus scope of coverage issues present questions of law. *Pile v. Carpenter*, 118 Tenn. 288, 296, 99 S.W. 360, 362 (1907); *Pennsylvania Lumbermens Mut. Fire Ins. Co. v. Holt*, 32 Tenn. App. 559, 566, 223 S.W.2d 203, 206 (1949).

Merrimack Mut. Fire Ins. Co. v. Batts, 59 S.W.3d 142, 147 (Tenn.Ct.App.2001). Further, this Court has stated:

> The interpretation of a written agreement is a matter of law and not of fact, therefore, our review is de novo on the record with no presumption of the correctness of the trial court's conclusions of law. *Union Planters Nat'l Bank v. American Home Assurance Co.*, 865 S.W.2d 907, 912 (Tenn. App. 1993). Insurance contracts are subject to the same rules of construction and enforcement as apply to contracts generally. *McKimm v. Bell*, 790 S.W.2d 526, 527 (Tenn. 1990).

Williams v. Berube & Assocs., 26 S.W.3d 640, 643 (Tenn.Ct.App.2000).

The Supreme Court of Tennessee noted the following about an appellate court's role in such cases:

> [An appellate] Court's role in construing statutes is "to ascertain and give effect to" the legislative purpose without unduly restricting or expanding a statute's coverage beyond its intended scope. *Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000). "'The legislative intent and purpose are to be ascertained primarily from the natural and ordinary meaning of the statutory language, without a forced or subtle interpretation that would limit or extend the statute's application.'" Id. (quoting *State v. Blackstock*, 19 S.W.3d 200, 210 (Tenn. 2000)). Courts are not authorized to alter or amend a statute and must "'presume that a legislature says in a statute what it means and means in a statute what it says there.'" 30 S.W.3d at 307 (quoting *Gleaves v. Checker Cab Transit Corp*., 15 S.W.3d 799, 803 (Tenn. 2000)). Further, the construction of a statute is a question of law subject to *de novo* review without a presumption of correctness. *Ivey v. Trans Global Gas & Oil*, 3 S.W.3d 441, 446 (Tenn. 1999).

Poper v. Rollins, 90 S.W.3d 682, 684 (Tenn.2002).

III. ANALYSIS

In the post-trial Order on Reserved Legal Issues, the trial court determined that Mountain Laurel was liable to Craig for $275,293.46. The Court arrived at this amount by determining the difference between the total jury award of $375,293.46 and $100,000 (representing the $50,000 already paid by Loving and Thompson's insurance company and the $50,000 already paid by the Mahaffeys for workers' compensation). Mountain Laurel seeks to offset its payment to Craig, stating that "[i]n order to avoid a double recovery for the same elements of damage, Mountain Laurel cannot be liable under the UM policy for any elements of Craig's loss for which he has been or may be compensated in workers' compensation benefits." It agrees with the first offset determined by the trial court, or the amount of the underlying liability insurance coverage available to Loving and Thompson ($50,000). However, Mountain Laurel contends that the $50,000 amount determined by the trial court, representing what has actually been paid by the Mahaffeys, is incorrect. Mountain Laurel maintains that it is entitled to a second offset in accordance with the terms of its uninsured-underinsured motorist policy in the amount of the total workers' compensation benefits paid or payable to Craig, or $189,059.77. Thus, the total offset amount sought by Mountain Laurel is $239,059.77. This offset would result in a judgment of $136,233.69, or the difference between the $375,293.46 jury award and the $239,059.77 offset.

The insurance policy issued to the Mahaffeys by Mountain Laurel states the following in relevant part:

> The bodily injury limit of liability under this endorsement for "each person" includes the total of all claims made for bodily injury to an insured and all claims of others

> derived from such bodily injury....The Limits of Liability for bodily injury under this endorsement shall be reduced by all sums paid because of bodily injury by or on behalf of any persons or organizations who may be legally responsible, including, but not limited to, all sums paid or payable under Part I - Liability to Others, paid or payable under Part II - Expenses For Medical Services To Insureds, and paid or payable because of bodily injury under any workers' compensation law or disability benefits or similar laws.

Appellant claims that "[t]he failure of the Mahaffeys to yet pay the entire amount of the workers' compensation judgment does not preclude Mountain Laurel's right to offset the full amount due under the workers' compensation law." Appellee Craig concedes the appropriateness of deducting Thompson/Loving's underlying liability insurance coverage of $50,000 from the jury award, but challenges Mountain Laurel's attempt to offset the full workers' compensation award. Further, Craig maintains that the Court should consider a different amount entirely when determining offsets.

Mountain Laurel relies on *Dwight v. Tennessee Farmers Mut. Ins. Co.*, 701 S.W.2d 621 (Tenn.Ct.App.1985) to support its position. In *Dwight*, an employee ("Dwight") was injured in an automobile collision with an uninsured vehicle while acting in the scope of her employment. Dwight voluntarily chose not to assert a workers' compensation claim against her employer, but sued the driver of the uninsured vehicle and Tennessee Farmers Mutual Insurance Company. A jury awarded Dwight $2,500.00, of which $2,218.74 represented medical expenses.

Tennessee Farmers Insurance Company maintained that it should only be liable for $281.26, or the difference between the jury verdict and Dwight's medical expenses. The workers' compensation offset provision at issue stated: "Damages payable under this coverage to or for a covered person will be reduced by: The amount paid or payable under any workers' compensation law...." When Dwight questioned the validity of the workers' compensation provision, this Court quoted *Terry v. Aetna Cas. & Sur. Co.*, 510 S.W.2d 509, 513-514 (Tenn.1974):

> [P]rovisions in such policies, approved by the Commissioner of Insurance, operating to reduce such coverage [uninsured motorist coverage] where other coverage or benefits are available to the insured arising from accident causing the loss, are valid if such provisions do not operate to deny payments to an insured of less than the statutory minimum.

This Court held that "[t]he setoff provisions entitle the insurance company to set off workers' compensation benefits actually paid and those that are payable." *Dwight* at 622. The Court, quoting the *Oxford American Dictionary,* went on to define payable as "that must or may be paid." When Dwight argued that she did not attempt to recover workers' compensation and that her claim had expired, the Court responded that "[t]he policy provision operates to reduce the coverage where the 'benefits are available'." *Id.*

The Supreme Court of Tennessee later made the following summarization:

> Under the holdings of *Terry v. Aetna Casualty & Sur. Co.* and *Dwight v. Tennessee Farmers Mut. Ins. Co.*, it is clear that an insured party's right to recover under an uninsured motorist policy that contains a setoff provision such as the one involved in this case may be reduced by the amount that the insured has collected, or could collect, under the Workers' Compensation Law.

Hudson v. Hudson Mun. Contractors, 898 S.W.2d 187, 189 (Tenn. 1995).

There is something disquieting about applying the rule in *Dwight v. Tenn. Farmers Mut.* to the facts of this case in which the Mahaffeys have not provided workers' compensation insurance benefits to their employees and have actually paid only $50,000 of a $189,059.77 judgment. *Dwight* does not require that the full amount of the judgment be collectible, but only that it be "payable." Applying the offset to the entire $189,059.77 workers' compensation judgment will not reduce the recovery of Craig from the uninsured-underinsured motorist carrier to a sum less than the statutory minimum. Tenn.Code Ann. § 56-7-1201 and Tenn.Code Ann. § 55-12-102. The line of cases in Tennessee stretching from *Terry v. Aetna Cas. & Sur. Co.*, 510 S.W.2d 509 (Tenn.1974) through *Hill v. Nationwide Mut. Ins. Co.*, 535 S.W.2d 327 (Tenn.1976); *Dwight v. Tenn. Farmers Mut. Ins. Co.*, 701 S.W.2d 621 (Tenn.Ct.App.1985); *Poper, ex rel. Poper v. Rollins*, 90 S.W.3d 682 (Tenn.2002) and *Shepherd v. Fregozo*, 175 S.W.3d 209 (Tenn.Ct.App.2005) make it clear that without legislative intervention, Tennessee remains, as held in *Terry*, a less-than-broad coverage jurisdiction with the legislative intent of its underinsured motorists statute being "to provide insured a recovery only up to the statutory minimum required with regard to the insured's actual damages." 510 S.W.2d at 513.

We cannot, consistent with binding precedent, read into a policy conforming to the Tennessee statute that such credit must be "collectible" rather than "payable" as *Dwight* clearly holds.

That *Terry* and its progeny remain firmly settled in the law of Tennessee is clearly reiterated by the Supreme Court in 2002.

> In *Terry*, this Court discussed the two general types of uninsured motorist statutes - those providing broad coverage and those providing only limited coverage. In a "broad coverage" jurisdiction, the insured plaintiff may recover up to the policy limits so long as the sum of plaintiff's recovery under the uninsured motorist coverage and any other payments do not exceed the insured's actual damages. Such coverage does not allow offsets which limit the insured plaintiff's full damage recovery. In contrast, a "limited coverage" jurisdiction allows the insured plaintiff to collect damages only up to a statutory minimum notwithstanding the actual damages. In such a jurisdiction, all sums collected can be credited towards reaching the statutory minimum. *Terry*, 510 S.W.2d at 513. We found that Tennessee's statute falls within the limited coverage category and held that the specific purpose of the statute is "to provide an

> insured a right of recovery under the uninsured motorist provisions of his policy only up to the statutory required minimum . . . ." *Id.*

Poper v. Rollins, 90 S.W.3d 682, 686 (Tenn.2002).

Mountain Laurel is entitled to the offset in the full amount of the workers' compensation judgment of $189,059.77.

According to Craig's argument, even though a jury determined that his actual damages were $375,293.46, Mountain Laurel's offset should be deducted from the policy limit of $1,000,000 instead of from his actual damages.

Craig relies on certain language in portions of the policy limiting the maximum possible liability under this $1,000,000 single limit coverage to a total of $1,000,000 regardless of the number of claims made or automobiles insured or lawsuits or premiums paid. However, the "limits of liability" available to Craig in this case under the insuring agreement are that which "an insured is legally entitled to recover from the owner or operator of an uninsured auto because of bodily injury sustained by an insured caused by an accident, arising out of the ownership, maintenance or use of an uninsured auto." The insured Craig is "legally entitled" to recover the $375,293.46 which was awarded him in his judgment against Loving and Thompson. The provisions of an insurance policy must be read together and not in isolation. The policy should be construed as a whole in a reasonable and logical manner. *Merrimack Mut. Fire Ins. Co. v. Batts*, 59 S.W.3d at 148. To construe provisions of the policy, making clear the absolute limits of liability under any circumstances, to provide the proper basis for policy offsets while limiting the right of the insured under the facts of the case to recover only the amount of his judgment against the uninsured motorist is neither reasonable nor logical.

The Mahaffeys' claim for a subrogation interest in the recovery by Craig was correctly rejected by the trial court. The Mahaffeys still owe Craig $139,059.77 unpaid by them on the judgment entered against them in the workers' compensation case. Loving and Thompson still owe Craig $325,293.46 on the tort judgment. Mountain Laurel has already been allowed credit under its underinsured motorist policy for both the payment of $50,000 by Thompson and Loving and the total "paid or payable" workers' compensation claim in the amount of $189,059.77. The judgment of the trial court disallowing the subrogation claim of the Mahaffeys is affirmed. *Hudson v. Hudson Municipal Contractors*, 898 S.W.2d 187 (Tenn.1995).

The judgment of the trial court limiting the offset available to Mountain Laurel to the $50,000 paid by the Mahaffeys to Craig as to the workers' compensation judgment is reversed as Mountain Laurel is entitled to an offset of the entire workers' compensation judgment in the amount of $189,059.77. The trial court holding that Mountain Laurel is entitled to an offset for the $50,000 paid on the tort judgment by Loving and Thompson is affirmed. The trial court judgment that the Mahaffeys are not entitled to any subrogation interest is affirmed. Costs on appeal are assessed one-

half to Findley and Nelle Mahaffey and one-half to Douglas Craig. The case is remanded to the trial court for such further proceedings as may be necessary.

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WILLIAM B. CAIN, JUDGE